

1 **Marquis Aurbach Coffing**  
Craig R. Anderson, Esq.  
2 Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
3 Nevada Bar No. 14246  
10001 Park Run Drive  
4 Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
5 Facsimile: (702) 382-5816  
canderson@maclaw.com  
6 jnichols@maclaw.com  
Attorneys for LVMPD Defendants

7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 Nicholas Hansen,

11 Plaintiff,

12 vs.

13 Officer Theodor “Teddy” Schaefer #9087,  
Officer Darrel Davies #14917, Sheriff Joe  
14 Lombardo, The Cromwell Las Vegas, Caesars  
Entertainment Corporation, Clark County,  
Clark County District Attorney Steven  
15 Wolfson, Ass. District Attorney Samuel Kern,  
DOES I through X, and/or ROE  
16 CORPORATIONS I through X,

17 Defendants.

Case Number: 2:19-cv-02234-APG-BNW

**LVMPD DEFENDANTS’ MOTION TO**  
**STAY DISCOVERY**

18 Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Sheriff Joseph  
19 Lombardo (“Lombardo”), Officer Theodor “Teddy” Schaefer #9087 (“Schaefer”), and  
20 Officer Darrel Davies #14917 (“Davies”), (hereinafter “LVMPD Defendants”), by and  
21 through their attorneys of record, the law firm of Marquis Aurbach Coffing, hereby submit  
22 their Motion to Stay Discovery. This Motion is made and based upon all papers, pleadings,

23 ...

24 ...

25 ...

26 ...

27 ...

1 and records on file herein, the attached Memorandum of Points and Authorities, and any oral  
2 argument allowed at a hearing on this matter.

3 Dated this 6th day of February, 2020.

4  
5 MARQUIS AURBACH COFFING

6  
7 By: /s/ Jackie V. Nichols  
8 Craig R. Anderson, Esq.  
9 Nevada Bar No. 6882  
10 Jackie V. Nichols, Esq.  
11 Nevada Bar No. 14246  
12 10001 Park Run Drive  
13 Las Vegas, Nevada 89145  
14 Attorneys for LVMPD Defendants

15  
16 **MEMORANDUM OF POINTS & AUTHORITIES**

17 **I. INTRODUCTION**

18 LVMPD Defendants seek a stay of proceedings and discovery pending this Court's  
19 resolution of a case-dispositive motion to dismiss. Indeed, the basis of LVMPD Defendants'  
20 motion is that Plaintiff failed to state a claim for relief. Additionally, the other named  
21 Defendants likewise filed dispositive motions. Discovery in this matter would be difficult  
22 because it is nearly impossible to determine the appropriate scope due to the lack of a  
23 cognizable claim. So, rather than subjecting the Parties to the continued expense and hassle  
24 of discovery, LVMPD Defendants respectfully ask this Court to stay discovery until the  
25 Court resolves the motion to dismiss.

26 **II. STATEMENT OF FACTS**

27 On August 27, 2019, plaintiff initiated suit against LVMPD Defendants (and others)  
regarding an incident that occurred in front of The Cromwell Hotel and Casino on the Las  
Vegas Strip (the "Cromwell") in the Eighth Judicial District Court of Clark County, Nevada  
("State Court"). See ECF 1-1 (the "Complaint"), *generally*. LVMPD defendants were  
served with a copy of the Complaint on December 9, 2019. Defendants the Cromwell Las

1 Vegas and Caesars Entertainment Corporation removed plaintiff's Complaint from State  
2 Court to the United States District Court, District of Nevada on December 30, 2019. ECF  
3 No. 1.

4 The Complaint asserts the following causes of action:

- 5 1. Racketeering in violation of NRS 207.360;
- 6 2. Conspiracy in violation of 18 U.S.C. § 241;
- 7 3. Deprivation of Rights in violation of 18 U.S.C. § 242;
- 8 4. Unequal Enforcement in violation of the Fourteenth Amendment;
- 9 5. Kidnapping;
- 10 6. Retaliatory Prosecution in violation of the First Amendment;
- 11 7. Wrongful Imprisonment;
- 12 8. Malicious Prosecution;
- 13 9. False Arrest in violation of the Fourth Amendment;
- 14 10. Theft;
- 15 11. Abuse of Discretion;
- 16 12. Forgery;
- 17 13. Fraud;
- 18 14. Negligence;
- 19 15. Wanton Disregard of Safety;
- 20 16. Collusion;
- 21 17. Reckless Endangerment;
- 22 18. Defamation;
- 23 19. Intentional Infliction of Emotional Distress;
- 24 20. Negligent Infliction of Emotional Distress;
- 25 21. No Phone Calls Allowed; and
- 26 22. Loss of Consortium.

1 See ECF 1-1. On January 6, 2020, LVMPD Defendants filed their motion to dismiss. ECF  
2 No. 7. The motion was based on several grounds, including failure to properly assert  
3 allegations against Sheriff Lombardo and failure to state a claim for which relief can be  
4 granted. *Id.* Defendants Cromwell, Caesar's Entertainment, Clark County, District  
5 Attorney Wolfson, and Deputy District Attorney Samuel Kern also filed motions to dismiss.  
6 ECF Nos. 8 and 16.

### 7 **III. LEGAL STANDARD**

8 "A district court has discretionary power to stay proceedings in its own court."  
9 *Glaser v. Depuy Orthopedics, Inc.*, No. 2:12-cv-00895-MMD-CWH, 2012 WL 3542380,  
10 at \*1 (D. Nev. Aug. 14, 2012) (citing *Landis v. N.A. Co.*, 299 U.S. 248, 254-55 (1936)  
11 (staying proceedings pending a decision regarding a motion to dismiss)). Further, courts  
12 may restrict discovery to protect a party from annoyance, harassment, or undue burden or  
13 expense. See FRCP 26(c); cf. FRCP 1 (the Rules shall "be construed and administered to  
14 secure the just, speedy, and inexpensive determination of every action"). Because courts  
15 have significant discretion to manage their dockets and control discovery, an order staying  
16 discovery pending resolution of a motion to dismiss will not be overturned absent a clear  
17 abuse of discretion. See, e.g., *Lazar v. Kroncke*, 862 F.3d 1186, 1193 (9th Cir. 2017).

18 Although the Ninth Circuit Court of Appeals has held that a stay of discovery is  
19 permissible where there are no factual issues raised by a pending motion to dismiss, see,  
20 e.g., *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984), *Wood v. McEwan*, 644 F.2d 797,  
21 801 (9th Cir. 1981), the Ninth Circuit has not further articulated a standard for assessing  
22 motions to stay based upon the pending resolution of a motion to dismiss. See *U.S. v.*  
23 *Shoshone Paiute Tribes*, 2012 WL 2327676, \*3 (D. Nev. June 19, 2012). However, judges  
24 in this District have repeatedly used the two-pronged test established by the Eastern District  
25 of California in *Mlenjnecky v. Olympus Imaging America*, No. 2:10-cv-02630 JAM KJN,  
26 2011 WL 489743 (E.D. Cal. Feb. 7, 2011). See e.g., *Hashem v. Army & Air Force Exch.,*  
27 *Serv.*, No. 2:14-CV-00549-APG, 2014 WL 7146657, at \*1 (D. Nev. Dec. 15, 2014)

1 (applying the *Mlenjnecky* standard and staying proceedings pending resolution of a motion  
2 to dismiss); *Stellia Ltd. v. B+S Card Service GmbH*, No. 2:12–CV–01099–GMN, 2013 WL  
3 1195709, \*4 (D. Nev. Mar. 22, 2013) (staying discovery pending motion to dismiss for  
4 improper venue); *Stephens v. LVNV Funding, LLC*, No. 2:12–cv–01159–GMN–VCF, 2013  
5 WL 1069259, \*3 (D. Nev. Mar. 14, 2013) (staying discovery pending motion to dismiss  
6 state-law claims as preempted by federal law); *Ministerio Roca Solida v. United States*  
7 *Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 503 (D. Nev. Jan. 14, 2013) (staying discovery  
8 pending motion to dismiss based in part upon federal government’s sovereign immunity).

9 Under the *Mlenjnecky* test, a party moving for a stay must establish that: (1) the  
10 pending motion is potentially dispositive of the entire case; and (2) the pending potentially  
11 dispositive motion can be decided without additional discovery. 2011 WL 489743 at \*6. In  
12 applying this two-part test, *Mlenjnecky* also specifies that courts should take a “preliminary  
13 peek” at the merits of the pending dispositive motion to assess whether a stay is warranted.  
14 *Id.* And, if the “preliminary peek” confirms that both elements of the test have been  
15 satisfied, the Court should issue an order staying discovery.

16 In this case, the Court should apply the *Mlenjnecky* standard because the test  
17 comports with the limited guidance from the Ninth Circuit and is consistent with the goal of  
18 efficiency that is fundamental to the Rules of Civil Procedure. *See Hashem*, 2014 WL  
19 7146657, at \*1 (using the *Mlenjnecky* test because “this court considers the goal of Federal  
20 Rule of Civil Procedure 1, which states that the rules must ‘be construed and administered to  
21 secure the just, speedy, and inexpensive determination of every action.’”) (quoting FRCP 1).

#### 22 **IV. LEGAL ARGUMENT**

23 A “preliminary peek” into the LVMPD Defendants’ Motion to Dismiss is all that is  
24 necessary to demonstrate that a stay of discovery is warranted. Indeed, both *Mlenjnecky*  
25 factors are satisfied in this case because: (A) the Motion to Dismiss is dispositive of all of  
26 Plaintiff’s claims; and (B) the Motion to Dismiss can—and should—be resolved without any  
27

1 additional discovery. Further, (C) the requested stay is warranted to save the parties' and the  
2 Court's resources.

3 **A. THE MOTION TO DISMISS IS DISPOSITIVE OF ALL CLAIMS.**

4 LVMPD Defendants' motion is premised on the argument that Plaintiff failed to  
5 specify a legally cognizable claim, and thus, cannot survive the motion to dismiss standard.  
6 As articulated in LVMPD Defendants' motion to dismiss, there is no claim for relief  
7 identified in the Complaint. Furthermore, the other named Defendants likewise filed  
8 motions to dismiss. *See* ECF Nos. 8 and 16. Thus, the Motion to Dismiss may dispose of  
9 all claims against LVMPD Defendants, satisfying the first *Mlenjnecky* factor and militating  
10 toward this Court staying proceedings.

11 **B. THE MOTION TO DISMISS SHOULD BE RESOLVED WITHOUT**  
12 **ANY ADDITIONAL DISCOVERY.**

13 Although discovery may proceed while a motion to dismiss is pending, the Ninth  
14 Circuit has recognized that an order staying discovery is appropriate where a motion to  
15 dismiss may be resolved without need for discovery. *See, e.g., Jarvis v. Regan*, 833 F.2d  
16 149, 155 (9th Cir. 1987).

17 In this case, discovery is unnecessary because the primary basis upon which the  
18 LVMPD Defendants' seek dismissal is the legal insufficiency of Plaintiff's claims. The  
19 motion to dismiss thus, does not implicate any disputed factual issues or topics for  
20 discovery—indeed, the Complaint, as pleaded, has failed to state a claim for relief. Thus,  
21 the second *Mlenjnecky* factor is easily met.

22 **C. THE REQUESTED STAY IS WARRANTED TO SAVE THE**  
23 **PARTIES' AND THE COURT'S RESOURCES.**

24 The Federal Rules of Civil Procedure recognize that the primary goal in the  
25 administration of justice is to "secure the just, speedy, and inexpensive determination of  
26 every action" that comes before the courts. *See* FRCP 1. Similarly, it is well-established  
27 that courts have significant discretion to manage their case loads and implement procedures

1 which promote fairness and efficiency. *Landis*, 299 U.S. at 254 (recognizing “the power  
2 inherent in every court to control the disposition of the causes on its docket with economy of  
3 time and effort for itself, for counsel, and for litigants.”).

4 Here, the requested stay promotes efficiency because it is unlikely that this Court,  
5 given its significant caseload, will resolve the motion to dismiss in the near future. Indeed,  
6 based on counsel’s experience litigating in this District, it is likely that the Court will not  
7 reach a decision until discovery is well underway or even completed. So, even if the Court  
8 grants the motion to dismiss, the Parties will incur significant expense in completing  
9 discovery for a case where discovery is unlikely to be a fruitful endeavor because of the  
10 uncertainty of Plaintiff’s claims.

11 Thus, this Court should stay discovery pending resolution of the Motion to Dismiss  
12 because doing so would save everyone valuable time and resources. *See, e.g., Leyva v.*  
13 *Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.1979) (“A trial court may, with  
14 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a  
15 stay of an action before it, pending resolution of independent proceedings which bear upon  
16 the case.”).

17 **V. CONCLUSION**

18 For the foregoing reasons, LVMPD Defendants respectfully request this Court stay  
19 discovery pending resolution of the Motion to Dismiss.

20 Dated this 6th day of February, 2020.

21 IT IS ORDERED that ECF No. 26  
22 is GRANTED under LCR 47-3.

MARQUIS AURBACH COFFING

23 IT IS FURTHER ORDERED that  
24 the parties are to file a joint  
25 proposed discovery plan and  
26 scheduling order within 14 days  
27 after the motion to dismiss is  
decided, unless the case is  
dismissed in its entirety with  
prejudice.


By: /s/ Jackie V. Nichols  
Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
Jackie V. Nichols, Esq.  
Nevada Bar No. 14246  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for LVMPD Defendants

IT IS SO ORDERED

DATED: March 23, 2020

Page 7 of 8

MAC:14687-245 3963010\_1 2/6/2020 9:38 AM

  
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **LVMPD DEFENDANTS' MOTION TO STAY DISCOVERY** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 6th day of February, 2020.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

☐ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

N/A

/s/ Krista Busch  
An employee of Marquis Aurbach Coffing